

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ARTEC EUROPE S.À.R.L.,

Plaintiff,

v.

SHENZHEN CREALITY 3D
TECHNOLOGY CO., LTD., AND
KICKSTARTER, PBC,

Defendants.

Civil Action No.: 1:22-1676 (WFK)(VMS)

**DECLARATION OF ALEXANDER
OSIPOV**

DECLARATION OF ALEXANDER OSIPOV

I, Alexander Osipov, declare:

1. I am the Chief Information Officer of Artec Europe S.a.r.l. (“Artec”). I have worked at Artec since 2015. My responsibilities include, among other items, developing information security measures and standards for the company’s products, analyzing and mitigating external and internal information security risks, and conducting and managing investigations to minimize risk.

2. I provide this Declaration in support of Artec’s reply memorandum in support of its Application for a Temporary Restraining Order and Preliminary Injunction. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would testify completely to such facts under oath.

3. In its opposition, Creality asserts that it hired another Chinese company headquartered in Shenzhen, China, Shenzhen Jimuyida Technology Co. Ltd. (“Jimuyida”) (a.k.a. MagicWand), and that Jimuyida “independently developed” the 3D software and “independently designed” the 3D hardware. Creality Opp. at 3-4. Creality asserts that “Jimuyida never reviewed,

analyzed, or copied any Artec software code,” “never employed, talked to, or otherwise engaged any former Artec employees,” including “Andrey Klimov, Alexandr Lomakin, or Ann Zevelyov,” and “Jimuyida has never been contacted by Artec regarding any of the copyright or patent allegations that it recently asserted against Creality.” Creality Opp. at 4. These statements are all false.

4. Contrary to Creality’s assertions and testimony, Artec and Jimuyida have had significant contact prior to this case. Jimuyida first came to Artec’s attention in 2018. In May 2018, Artec learned that a company with the website domain of 91ruler.com had purchased at least 14 of Artec’s scanners and had rented over 200 hundred scanners, beginning in 2017. This was extremely suspicious.

5. Artec hired an investigator named Harrison Tang from Seagon IP to investigate.

6. Artec determined Jimuyida operates with a (small) conglomerate of companies that have overlapping management and key investors. These companies include:

- i. Shenzhen Jimuyida (a.k.a. MagicWand);
- ii. Ruler3D (*i.e.*, 91ruler.com), who performed research and development for Jimuyida; and
- iii. Shenzhen Aisibe (a.k.a. Jiaeda).

7. On June 7, 2018, Mr. Tang attended the Chengdu tradeshow. Mr. Tang spoke with Jimuyida representatives and examined Jimuyida’s scanner.

8. Based on our review of the findings, it appears Jimuyida placed the Artec Eva scanner in a different carrying case. Jimuyida also appears to have brought a Magic Wand scanner to the tradeshow, but it was not functional yet. The photo below from Seagon IP and Mr. Tang’s report shows a MagicWand employee operating an Artec Eva 3D scanner using external plastic case.

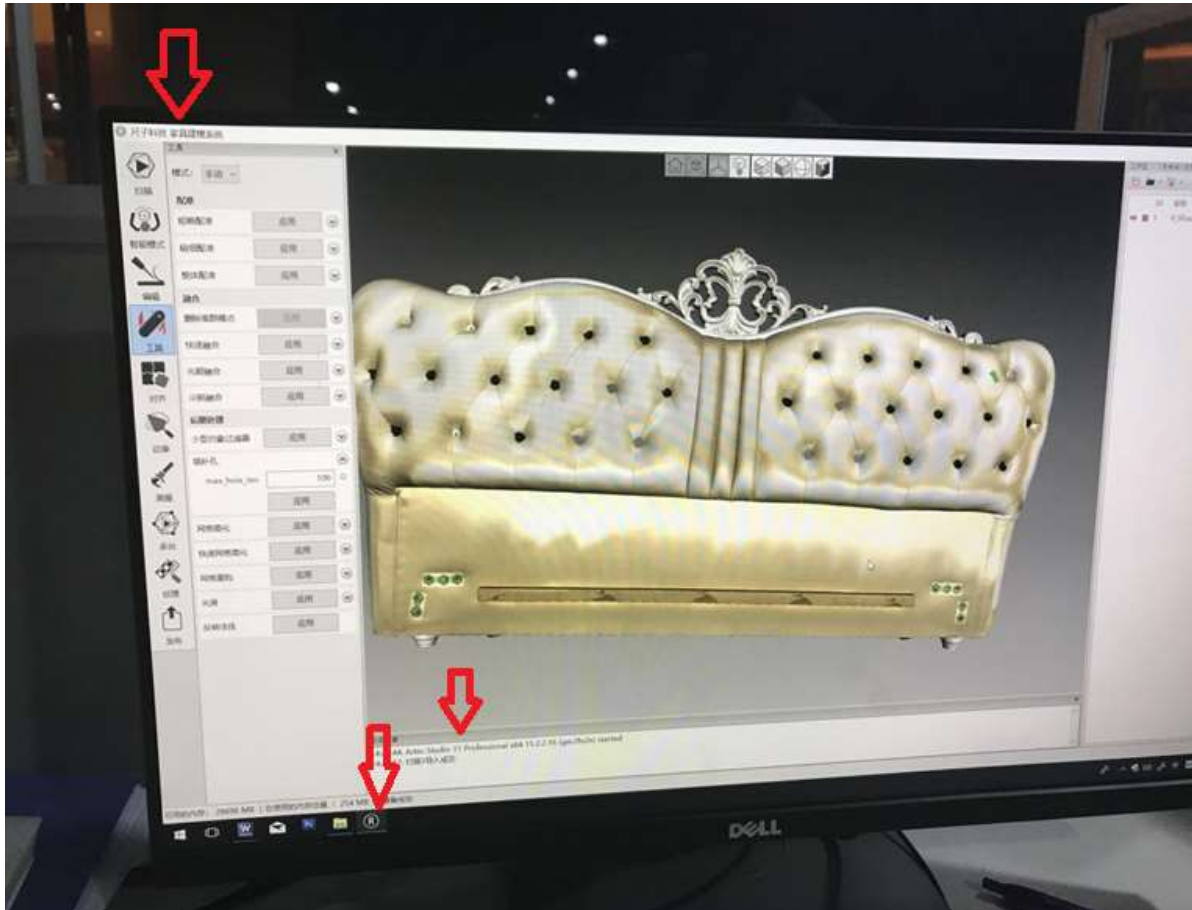


9. Expressing interest in the Jimyuida's, Mr. Tang attended the Shanghai CES Asia tradeshow. Jimuyida exhibited and operated the Magic Wand scanners.

10. On June 27, 2018, Mr. Tang visited Jimuyida Shenzhen office to meet with Mr. Yao, the Chief Technology Officer of Jimuyida. Mr. Tang reported that Mr. Yao confessed that Jimuyida bought numerous samples of scanners from their competitors including Artec and had studied them carefully for research and development of their own products. Mr. Tang recorded the conversation.

11. Mr. Tang recorded a video showing the scanner and software. I have personally reviewed this video and the software is identical to the Artec Studio. Through the video and photos, Artec identified clear infringement, including, hiding brand information on Artec Eva by using

external plastic case and modification of Artec Studio software by intervening application and changing its name, icons to “RulerStudio.” This is shown with arrows on top of the photo below.



12. On July 23, 2018, Harrison Tang from Seagon IP, on behalf of Artec, received two samples of the Magic Wand scanner. All aspects of the process, including chain of custody, was notarized under Chinese law. The photo below from the Seagon IP report shows that the device was shipped with USB drive containing Magic Wand software (WandStudio Pro 1.3.6.009280) and dongle to operate it along with the device.

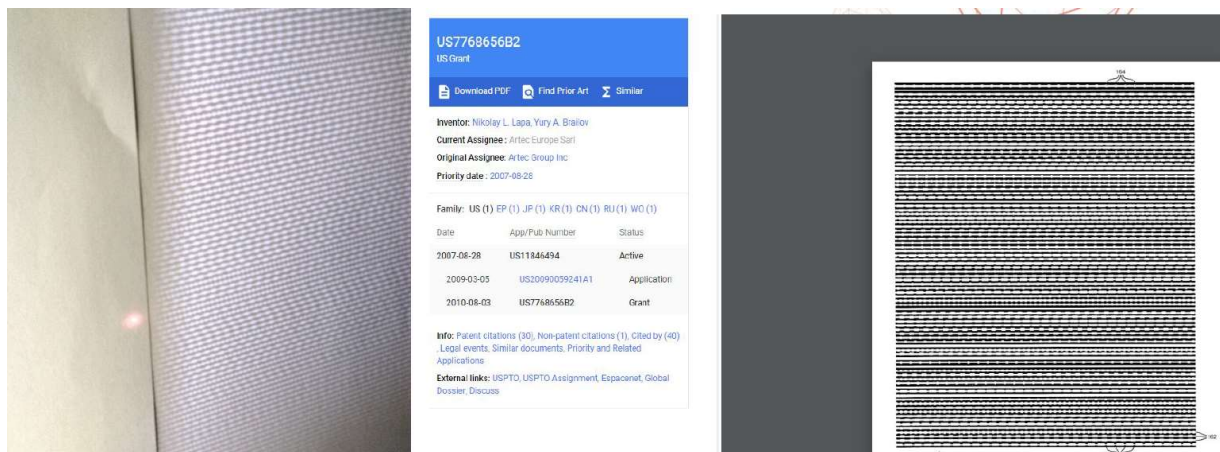


13. Artec hired law firm, Allen & Overy LLP and local counsel Lifang & Partners, in Shanghai, to continue the investigation and explore legal options. Artec sent cease and desist letters to Jimuyida demanding that it either license or cease using Artec's proprietary software and patented pattern and method and copyrighted software. Jimuyida responded to the cease and desist letters and denied all allegations.

14. Artec sent another cease and desist letter on August 30, 2018. *See* August 30, 2018 Cease-And-Desist Letter, attached hereto as Exhibit 1.

15. In September 2018, Jimuyida claimed that it did not copy Artec software. Yet there were at least 30 Artec Eva scanners with direct connections to MagicWand accounts. In other words, Jimuyida continued to retain and use a large number of Artec scanners.

16. In October 2018, Artec determined that the Jimuyida's MagicWand scanner process and structured light pattern was directly copied from and infringed Artec's patent. The picture below shows the photo of structured light pattern inside MagicWand device, that I made myself in 2018. As evidence by the photo on the left, the MagicWand is nearly identical to Artec's U.S. patent 7,768,656B2 Fig.13



17. Jimuyida has denied all wrongdoing. Jimuyida sent a letter along with an email from zhangjiy@jimuyida.com where it confirmed ownership of the number of Artec 3D scanners and software installations and accounts from domain @91ruler.com at my.artec3d.com used to register the software. Jimuyida stated that company never copied or sold Artec Studio software all Artec 3D scanners are stored in their factory or warehouse, so it is impossible for company to sell them. Jimuyida added that they believe that company does not have copyright infringement and does not infringe Artec Studio software copyright for their work.

18. Around 2014, Artec employees, including key employee, Andrey Klimov, left the company and misappropriated trade secrets, giving rise to litigation in 2015.¹ These employees

¹ See *Artec Grp., Inc. v. Klimov*, No. 15-cv-03449-RMW (N.D. Cal. Dec. 22, 2015).

used intellectual property belonging to Artec to develop the Thor3D scanner.² The court case later settled.

19. In October 2018, Artec began investigating possible collaboration of Artec ex-employees with any companies of the Jimuyida conglomerate. Artec learned through a third-party public examination service that the Jimuyida corporate mail server @91ruler.com has a rule of name creation for users as First Letter of the Name or full Name than Surname @91ruler.com for all Jimuyida employees. On the example below you can see verification for Jimuyida top executive liaoyuan@91ruler.com is successful, but for mistakenly typed address lia2oyuan@91ruler.com is failed.

<input type="checkbox"/>			lia2oyuan@91ruler.com	Bad
<input type="checkbox"/>			liaoyuan@91ruler.com	Ok

Artec confirmed using this service existence on Jimuyida corporate mail server of email addresses of several Rogue employees that was litigated by Artec in 2015. Below is confirmations for AKlimov@91ruler.com, AZevelyov@91ruler.com, Alomakin@91ruler.com, Parkhalin@91ruler.com as long as failed replies for mistakenly typed addresses

<input type="checkbox"/>			anklimov@91ruler.com	Bad
<input type="checkbox"/>			aklimov@91ruler.com	Ok

<input type="checkbox"/>			azevelyov@91ruler.com	Ok
<input type="checkbox"/>			zevelyov@91ruler.com	Bad
<input type="checkbox"/>			lomakin@91ruler.com	Bad
<input type="checkbox"/>			alomakin@91ruler.com	Ok

<input type="checkbox"/>			parkhalin@91ruler.com	Ok
--------------------------	---	---	-----------------------	----

² See *Artec Grp., Inc. v. Klimov*, No. 15-cv-03449-RMW (N.D. Cal. Aug. 25, 2016).

<input type="checkbox"/>			pa22rkhalin@91ruler.com	Bad
--------------------------	---	---	-------------------------	-----

20. Artec hired an independent company, Robert Kelso with Forensic Pursuit, to confirm existence of Rogue employees email addresses. Mr. Kelson provided Artec with a report confirming Artec's investigation. The picture below from Forensic Pursuit report shows that AKlimov@91ruler.com, AZevelyov91ruler.com exists on the server but A2Klimov@91ruler.com, A3Zevelyov91ruler.com does not.

a2klimov@91ruler.com	Bad
aklimov@91ruler.com	Ok
azevelyov@91ruler.com	Ok
a3zevelyov@91ruler.com	Bad

The detailed response from the Jimuyida server in 2018 is shown below.

```

parkhalin@91ruler.com is OK

Protect Your Database
Professional Email Verifier - Check Your List correct.email

mxbiz2.qq.com
250 OK

MX record about 91ruler.com exists.
Connection succeeded to mxbiz2.qq.com SMTP.
220 bizmx17.qq.com MX QQ Mail Server
> HELO verify-email.org
250 bizmx17.qq.com
> MAIL FROM:
=250 Ok
> RCPT TO:
=250 OK

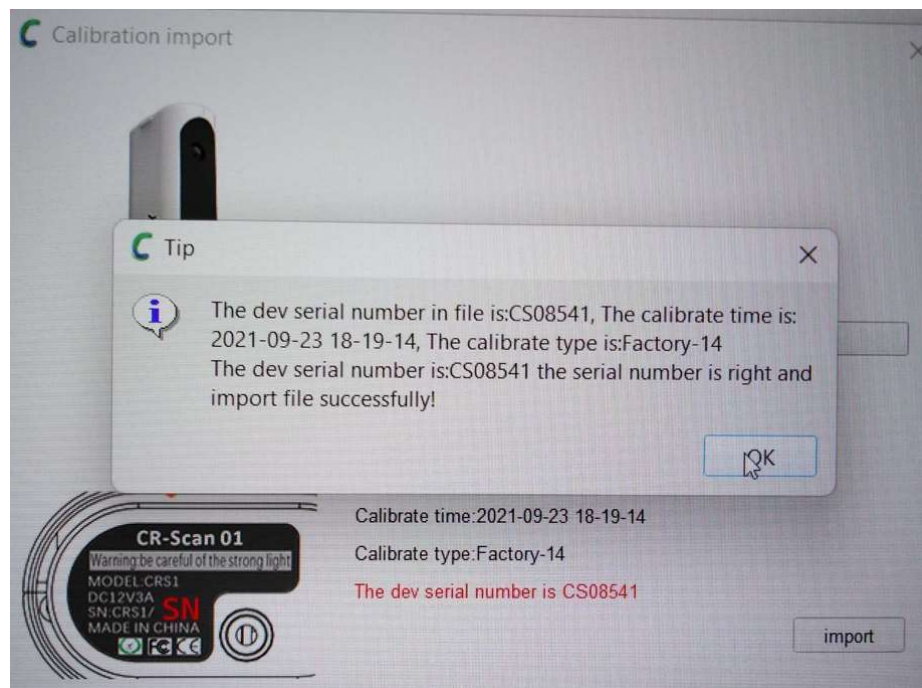
```


21. The report above confirms Artec's findings that in 2018, Andrey Klimov, Anna Zevelyov, Peter Parkhalin, and Alexandr Lomakin were working together with Jimuyida or their conglomerate of companies.

22. In May 2020, Artec learned that Jimuyida received series A funding US\$15 million.

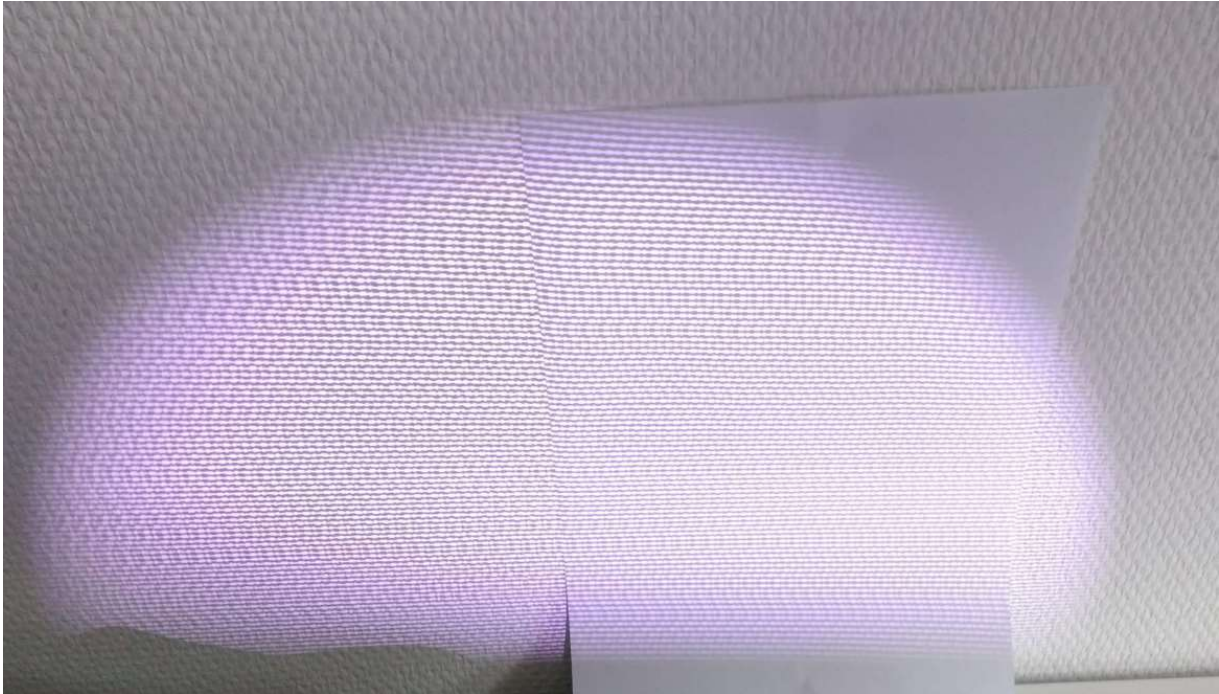
23. In late February 2022, Artec discovered that the Creality Lizard Scanner bore certain of the same hallmarks to Artec hardware and software. Artec has purchased one of the Creality CR-Scan 01 3D scanner and received it with Creality Studio software on USB stick.

24. Artec analyzed the CR-Scan 01 3D scanner serial number CS08541 and Creality Studio version 1.7.4.383. It learned on closer inspection that artifacts within the software code pointed back to the Magic Wand software copied from Artec and use Artec pattern. The photo below shows the serial number of the Creality device and date of production in 2021.



25. The photo below shows a projection to the white wall pattern of running CR-Scan 01 3D scanner serial number CS08541. This photo was used later during the analysis by Gleb

Gusev that confirms the use Artec 3D pattern type that directly infringe Artec patent US7768656B2.

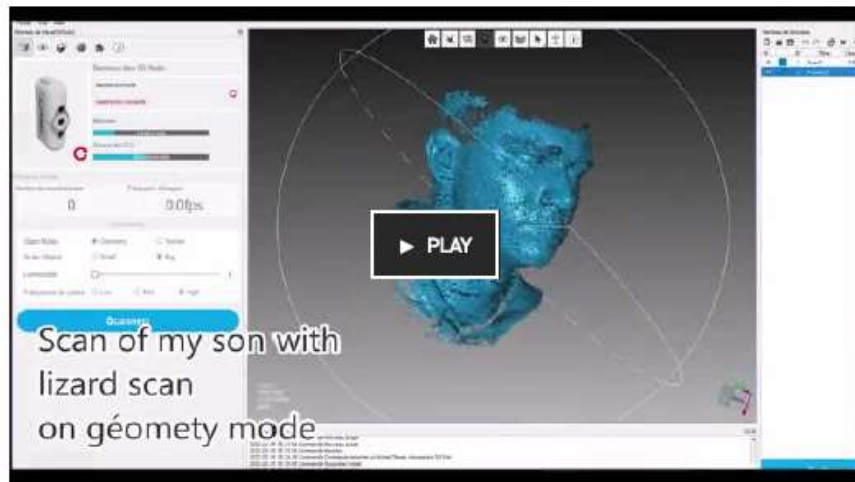


26. During the campaign, Creality released on the Kickstarter web-site Review Videos from third party companies and individual reviewers namely Don Barton, Twentse 3D Experience, Making for Motorsport, EBPMAN Tech Reviews, GomeowCreations, Novaspirit Tech and others. In this videos that are publicly available all these companies and individual reviewers are already having in their hands the Lizard product and software and using them to create review. On the photo below from Kickstarter web page there is a clear video with the scan that reviewer has made using Creality Lizard 3D scanner and Creality Studio software.

Review Videos (Updating)

Don Barton

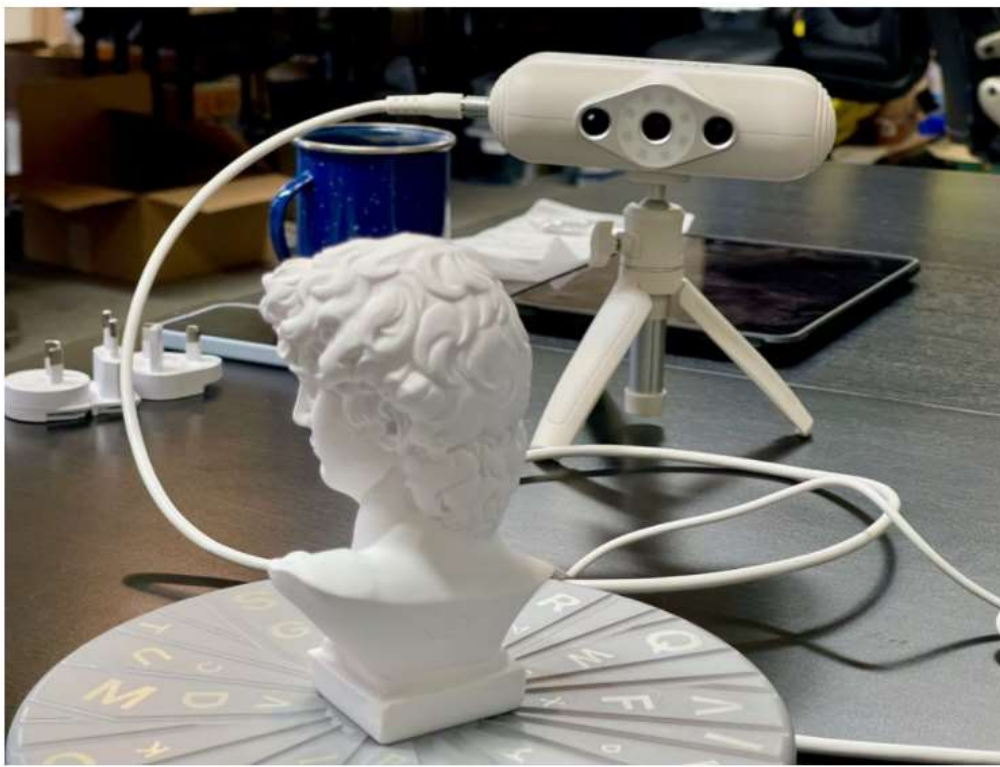
Project made with the Lizard scan, with the faces of my son, my wife, and I.



Twentse 3D Experience

27. On different third party websites like Fabbaloo.com articles with Creality Lizard product reviews have been posted. They confirm that authors "were able to obtain a CR-Scan Lizard system from Creality" and use it along with the complete and operating Creality Studio software. Picture below shows Creality Lizard product.

By Kerry Stevenson on February 24th, 2022 in Hardware, news
Tags: creality, handheld, kickstarter, lizard, scanner, turntable



The CR-Scan Lizard [Source: Fabbaloo]

We were able to obtain a CR-Scan Lizard 3D scanning system from Creality and performed some testing.

28. EBPMAN Tech Reviews has a public address in Illinois, United States (<https://www.linkedin.com/in/ebpmantechreviews>) and GomeowCreations has public address in WA, United States (<https://www.facebook.com/GomeowCreations>).

29. Creality has also started another campaign for the same product on another platform, Indiegogo, which is a crowdfunding website founded in 2008 with headquarter in San Francisco, California. Creality offers their product with a delivery date of within a month of April 2022. The picture below shows that the MSRP price is already determined and that Creality even offers a discount for it.

Dual Pack CR-Scan Lizard Premium

\$868 ~~\$1398~~ **38% off**

Scanner*2 Data Transmission Cable*2 Power Adapter & Plugs*2

Turntable*2 Tripod*2 Carrying Case*2

Daul Pack Premium

\$6,788 HKD ~~\$10,950 HKD~~ (38% OFF)

🌐 \$866 USD

For Indiegogo contributors ONLY! Get Dual Pack CR-Scan Lizard for \$868-38% OFF the MSRP of USD\$1398!

Included Items

- - Scanner (2)
- - Data Transmission Cable (2)
- - Power Adapter & Plugs (2)
- - Carrying Case (2)
- Turntable and Tripod (2)

Estimated Shipping

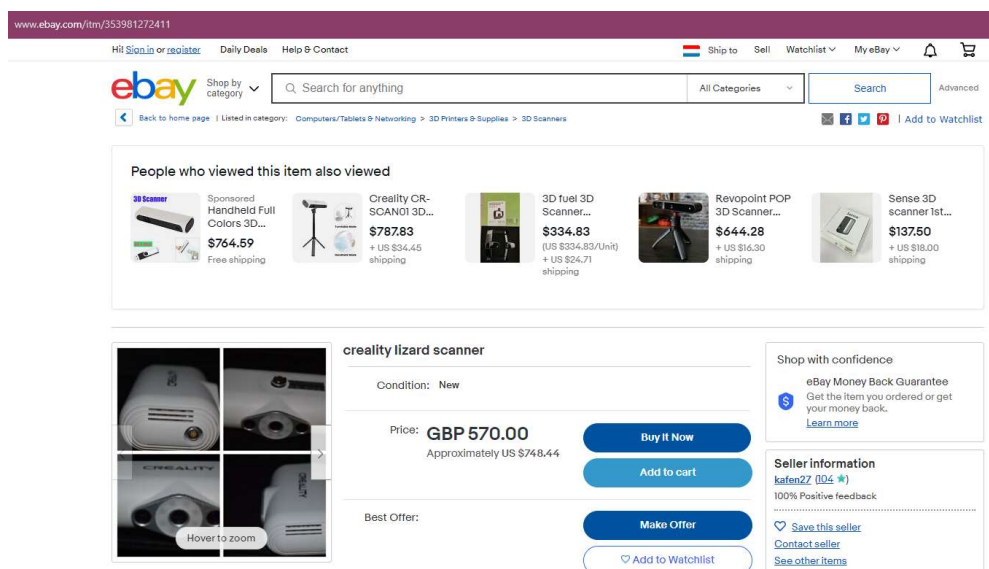
Original: April 2022
Current: April 2022

6 out of 300 claimed

Ships worldwide.

GET THIS PERK

30. Artec has also found on Ebay.com a listing with the Crealty Lizard product available for immediate shipment from private person. The picture below shows a screen shot from the page <https://www.ebay.com/itm/353981272411>.



31. Contrary to Creality claims that Artec resorts to “bald speculation and attorney argument,” I can confirm that Artec was investigating MagicWand and Creality activities from 2018 and support our findings with evidences, factual declarations, third party expert opinions and reports from third party investigators.

32. In comparison to Artec’s software, the Magic Wand 3D scanner and Wand Studio Pro uses: (1) the same optical location for projector and 3D camera; (2) the same models of PG USB cameras as sensors; (3) the same 3rd party UART drivers; (4) a similar calibration system; and (5) a similar graphical user interface.

33. Even if Creality did not directly sell products to United States residents, it concedes that it solicited funds from US consumers and other US-based investors. Specifically, Creality solicited investments from US consumers through Kickstarter and Indiegogo. *See* Kickstarter webpage, attached hereto as Exhibit 2 [101. Creality CR-Scan Lizard Kickstarter].

34. Kickstarter is a crowd-funding platform that allows “project creators” to solicit investments for a particular project. In this case, Creality posted the Lizard to Kicker’ starter’s page stating:

Hi Kickstarter, it's Creality! Last year, we globally released the mid-range "CR-Scan 01", the first time bringing the industrial-grade 3D scanner into the market. It received warm welcomes and successfully won support from users. After perusal of the feedback, we know our fans love it.


Creality truly understands that accuracy, efficiency, and ease of use are what 3D scanner enthusiasts pursue. To comprehensively enhance the user experience, our 3D scanner R&D team dedicates to optical technology research and strives for breakthroughs. That's why we bring "CR-Scan Lizard" to Kickstarter this year.

Just like its name "Lizard", the scanner we bring can acutely capture the finest detail with a whopping accuracy of up to 0.05 mm. The use of invisible light sources of the near-infrared is protective to the eyes, and it has excellent light compatibility. High precision 3D scanner is usually high-priced, but CR-Scan Lizard will be affordable with friendly pricing, and we aim to introduce it to all of our people with real benefits.


See Exhibit 2.

35. Creality and its Vice Director, Xun Luo, admit that over 4,000 of Creality's Kickstarter funders reside in the United States.

36. Creality has employees residing in the United States. It has also engaged in social media marketing campaigns directed at the United States.



[Home](#)
[My Network](#)
[Jobs](#)
[Messaging](#)



With You We Spark Creativity

Creality 8th Anniversary Celebration
April 9th, 2022 | Shenzhen, China

Creality 3D

Creality 3D is a professional 3d printer manufacturer, specializing in 3d printing.
Machinery Manufacturing · Shenzhen, Guangdong · 15,487 followers

See all 76 employees on LinkedIn

[+ Follow](#)
[Visit website](#)
[More](#)

[Home](#)
[About](#)
[Posts](#)
[Jobs](#)
[People](#)
[Videos](#)

76 employees

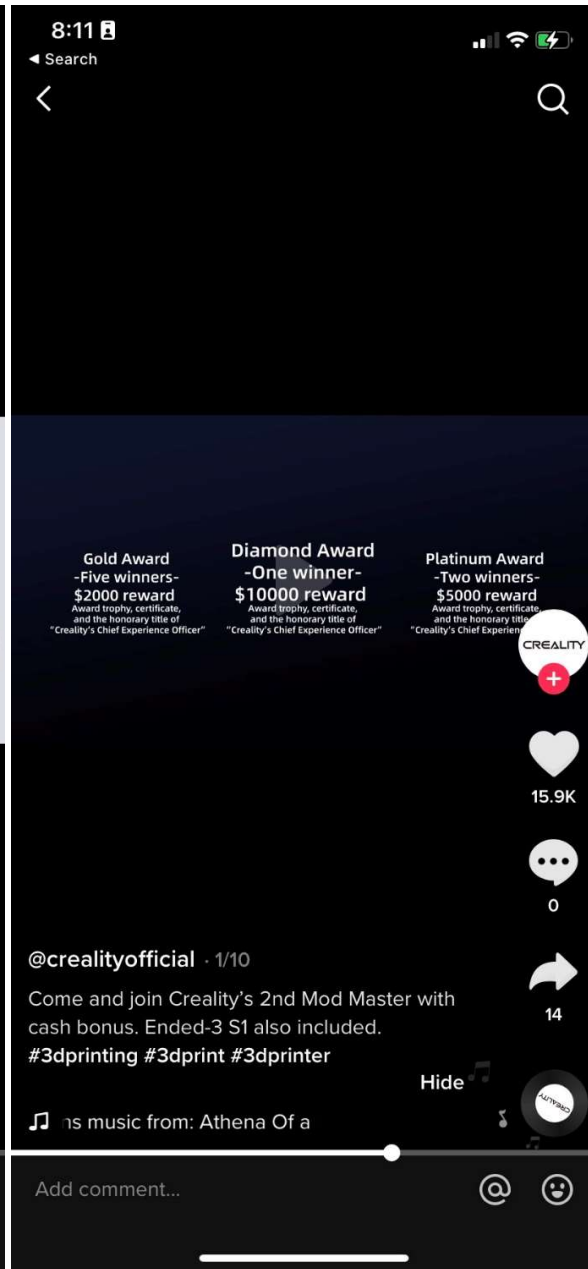
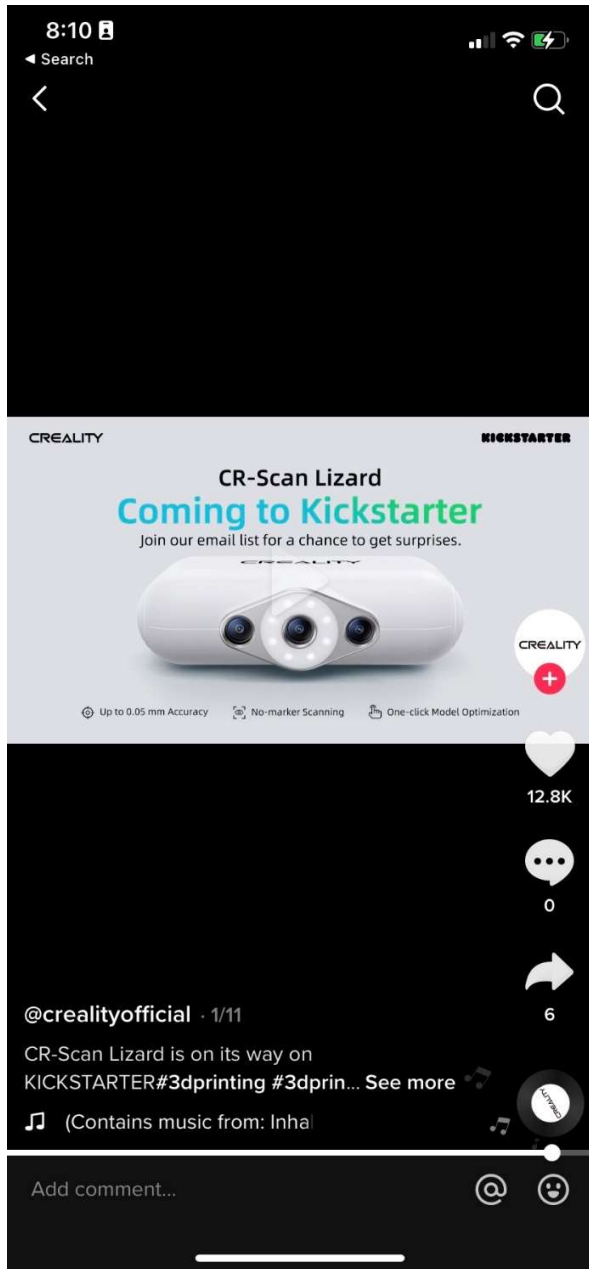
[< Previous](#)
[Next >](#)

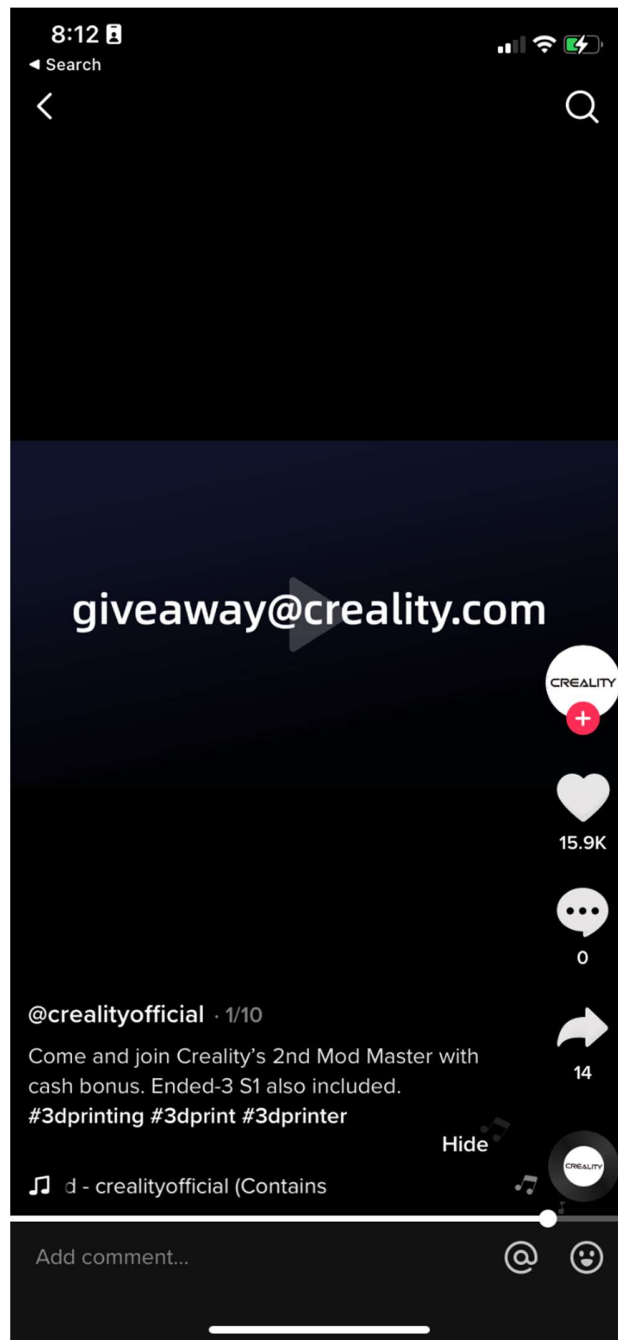
Where they live [+ Add](#)

52	China
23	Shenzhen, Guangdong, China
6	Hong Kong
3	Beijing City, China
3	United States

Where they studied [+ Add](#)

2	Guangdong University of Foreign Studies
2	University of Leeds
1	Universidad de Palermo
1	Universidad Nacional de Tucumán
1	The University of Queensland





37. Creality is selling its infringing Lizard scanner at an approximate 95% discount. The release of funds to Creality would severely harm Artec's business by resulting in irreconcilable price erosion of Artec's products. If Creality is not stopped, Artec could be forced

to drastically change its pricing structure to compete with the significantly lower priced knock-off products.

38. Permitting Creality's sale and distribution of over 9,000 infringing Creality Lizard scanners to go forward would cause a low-cost infringing product to enter the market that would reset consumer expectations for price based on goods created by a company that did not incur the research and development costs necessary to develop their product and instead infringe Plaintiff's patent and copyrighted software.

39. Further, without immediately stopping Creality's conduct, Creality can continue to develop infringing products, as well as to sell or license the products to third-parties for further distribution.

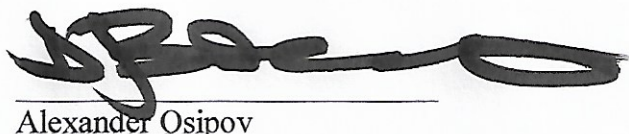
40. In addition to the sale of infringing products, Creality published the software on Kickstarter such that all Kickstarter backers will automatically obtain Creality Studio software that infringes Artec's copyrights and patent. After this software has been delivered to approximately 9,000 consumers, there will be no opportunity to stop them from using it. *See* Exhibit 3.

41. Allowing Kickstarter to transfer the funds to Creality will directly fund the manufacturing, distribution, and dissemination of low-cost infringing devices into the U.S. market, irreversibly harming Artec's market-share and creating pricing pressure on Artec that cannot be reversed.

42. Additionally, Artec has learned that Creality has started another campaign on another platform, Indiegogo, and intends to sell and deliver products in April 2022. *See* Indiegogo webpage, attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 4 day of April, 2022 in Luxembourg, Grand-Duchy of Luxembourg.



Alexander Osipov

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served to all counsel of record by ECF filing on 04.06 2022.

/s/ _____